

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 483

Introduced by Senator Corbett

February 26, 2009

An act to amend Section ~~2924e~~ 2923.5 of the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 483, as amended, Corbett. Mortgages: foreclosure.

Upon a breach of the obligation of a mortgage or transfer of an interest in property, in order to exercise a power of sale, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default. Existing law prohibits filing the notice of default until 30 days after certain actions are taken, except in certain instances, including when the borrower has filed for bankruptcy and the proceedings are not finalized.

This bill would revise this bankruptcy exception described above, to provide instead that a notice of default may be filed without waiting 30 days when the borrower has filed a case under specified federal provisions relating to bankruptcy and that the bankruptcy court has not entered an order closing or dismissing the bankruptcy case or granting relief from a stay of foreclosure.

~~Existing law requires that if a default on a mortgage is cured, as specified, all proceedings instituted prior to that event are to be dismissed or discontinued, as specified.~~

~~This bill would make technical, nonsubstantive changes to that provision and related provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2923.5 of the Civil Code is amended to
2 read:

3 2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized
4 agent may not file a notice of default pursuant to Section 2924
5 until 30 days after contact is made as required by paragraph (2) or
6 30 days after satisfying the due diligence requirements as described
7 in subdivision (g).

8 (2) A mortgagee, beneficiary, or authorized agent shall contact
9 the borrower in person or by telephone in order to assess the
10 borrower's financial situation and explore options for the borrower
11 to avoid foreclosure. During the initial contact, the mortgagee,
12 beneficiary, or authorized agent shall advise the borrower that he
13 or she has the right to request a subsequent meeting and, if
14 requested, the mortgagee, beneficiary, or authorized agent shall
15 schedule the meeting to occur within 14 days. The assessment of
16 the borrower's financial situation and discussion of options may
17 occur during the first contact, or at the subsequent meeting
18 scheduled for that purpose. In either case, the borrower shall be
19 provided the toll-free telephone number made available by the
20 United States Department of Housing and Urban Development
21 (HUD) to find a HUD-certified housing counseling agency. Any
22 meeting may occur telephonically.

23 (b) A notice of default filed pursuant to Section 2924 shall
24 include a declaration from the mortgagee, beneficiary, or authorized
25 agent that it has contacted the borrower, tried with due diligence
26 to contact the borrower as required by this section, or the borrower
27 has surrendered the property to the mortgagee, trustee, beneficiary,
28 or authorized agent.

29 (c) If a mortgagee, trustee, beneficiary, or authorized agent had
30 already filed the notice of default prior to the enactment of this
31 section and did not subsequently file a notice of rescission, then
32 the mortgagee, trustee, beneficiary, or authorized agent shall, as
33 part of the notice of sale filed pursuant to Section 2924f, include
34 a declaration that either:

1 (1) States that the borrower was contacted to assess the
2 borrower's financial situation and to explore options for the
3 borrower to avoid foreclosure.

4 (2) Lists the efforts made, if any, to contact the borrower in the
5 event no contact was made.

6 (d) A mortgagee's, beneficiary's, or authorized agent's loss
7 mitigation personnel may participate by telephone during any
8 contact required by this section.

9 (e) For purposes of this section, a "borrower" shall include a
10 mortgagor or trustor.

11 (f) A borrower may designate a HUD-certified housing
12 counseling agency, attorney, or other advisor to discuss with the
13 mortgagee, beneficiary, or authorized agent, on the borrower's
14 behalf, options for the borrower to avoid foreclosure. That contact
15 made at the direction of the borrower shall satisfy the contact
16 requirements of paragraph (2) of subdivision (a). Any loan
17 modification or workout plan offered at the meeting by the
18 mortgagee, beneficiary, or authorized agent is subject to approval
19 by the borrower.

20 (g) A notice of default may be filed pursuant to Section 2924
21 when a mortgagee, beneficiary, or authorized agent has not
22 contacted a borrower as required by paragraph (2) of subdivision
23 (a) provided that the failure to contact the borrower occurred
24 despite the due diligence of the mortgagee, beneficiary, or
25 authorized agent. For purposes of this section, "due diligence"
26 shall require and mean all of the following:

27 (1) A mortgagee, beneficiary, or authorized agent shall first
28 attempt to contact a borrower by sending a first-class letter that
29 includes the toll-free telephone number made available by HUD
30 to find a HUD-certified housing counseling agency.

31 (2) (A) After the letter has been sent, the mortgagee,
32 beneficiary, or authorized agent shall attempt to contact the
33 borrower by telephone at least three times at different hours and
34 on different days. Telephone calls shall be made to the primary
35 telephone number on file.

36 (B) A mortgagee, beneficiary, or authorized agent may attempt
37 to contact a borrower using an automated system to dial borrowers,
38 provided that, if the telephone call is answered, the call is
39 connected to a live representative of the mortgagee, beneficiary,
40 or authorized agent.

1 (C) A mortgagee, beneficiary, or authorized agent satisfies the
2 telephone contact requirements of this paragraph if it determines,
3 after attempting contact pursuant to this paragraph, that the
4 borrower's primary telephone number and secondary telephone
5 number or numbers on file, if any, have been disconnected.

6 (3) If the borrower does not respond within two weeks after the
7 telephone call requirements of paragraph (2) have been satisfied,
8 the mortgagee, beneficiary, or authorized agent shall then send a
9 certified letter, with return receipt requested.

10 (4) The mortgagee, beneficiary, or authorized agent shall provide
11 a means for the borrower to contact it in a timely manner, including
12 a toll-free telephone number that will provide access to a live
13 representative during business hours.

14 (5) The mortgagee, beneficiary, or authorized agent has posted
15 a prominent link on the homepage of its Internet Web site, if any,
16 to the following information:

17 (A) Options that may be available to borrowers who are unable
18 to afford their mortgage payments and who wish to avoid
19 foreclosure, and instructions to borrowers advising them on steps
20 to take to explore those options.

21 (B) A list of financial documents borrowers should collect and
22 be prepared to present to the mortgagee, beneficiary, or authorized
23 agent when discussing options for avoiding foreclosure.

24 (C) A toll-free telephone number for borrowers who wish to
25 discuss options for avoiding foreclosure with their mortgagee,
26 beneficiary, or authorized agent.

27 (D) The toll-free telephone number made available by HUD to
28 find a HUD-certified housing counseling agency.

29 (h) Subdivisions (a), (c), and (g) shall not apply if any of the
30 following occurs:

31 (1) The borrower has surrendered the property as evidenced by
32 either a letter confirming the surrender or delivery of the keys to
33 the property to the mortgagee, trustee, beneficiary, or authorized
34 agent.

35 (2) The borrower has contracted with an organization, person,
36 or entity whose primary business is advising people who have
37 decided to leave their homes on how to extend the foreclosure
38 process and avoid their contractual obligations to mortgagees or
39 beneficiaries.

1 ~~(3) The borrower has filed for bankruptcy, and the proceedings~~
2 ~~have not been finalized.~~

3 *(3) A case has been filed by the borrower under Chapter 7, 11,*
4 *12, or 13 of Title 11 of the United States Code, and the bankruptcy*
5 *court has not entered an order closing or dismissing the bankruptcy*
6 *case or granting relief from a stay of foreclosure.*

7 (i) This section shall apply only to loans made from January 1,
8 2003, to December 31, 2007, inclusive, that are secured by
9 residential real property and are for owner-occupied residences.
10 For purposes of this subdivision, “owner-occupied” means that
11 the residence is the principal residence of the borrower.

12 (j) This section shall remain in effect only until January 1, 2013,
13 and as of that date is repealed, unless a later enacted statute, that
14 is enacted before January 1, 2013, deletes or extends that date.

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17 **All matter omitted in this version of the bill**
18 **appears in the bill as introduced in the**
19 **Senate, February 26, 2009 (JR11)**
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